PLAINTIFFS'

EXHIBIT

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Document Attached

Documents which supports the Plaintiffs' legal Claims



Office of the Governor Office of Consumer Affairs

April 20, 1993

Barry W. Reld

404-656-3790 FAX: 404-651-9018

Mr. James Bostwick 3136 Desert Drive Apartment #4 East Point, Georgia 30344

RE: Our Reference File No. 921215-03F-43

Consumer Name: James Bostwick

Business Name: Fidelity Financial Services

Dear Mr. Bostwick:

Thank you for your letter of April 2, 1993 concerning your complaint with the above named business.

After reviewing your letter and other documents it appears at this time that the facts you have alleged require substantiation through other complaints showing a pattern of practice on the part of the business before this office could assist you. We do not have such a pattern of practice from complaints at this time. We will monitor this business's activities and may recontact you at a later date if such a pattern appears.

Since you allege that documents have been falsified or forged you may wish to seek legal advice, since this allegation may be criminal.

Thank you for bringing this matter to our attention.

Sincerely,

Michael A. Kaiser Investigator

MAK/bdw



3136 Desert Drive, Apt. 4
East Point, GA 30344

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April 2, 1993

Office of the Governor Office of Consumer Affairs 2 Martin Luther King, Jr. Dr. Plaza Level East Atlanta, GA 30334-4600

Re: #921215-03F-43

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Business: Fidelity Financial Services

Dear Mr. Rarsh:

In reply to your correspondence dated March 30, 1993, I wish to state that documents pertaining to the purchase of my car were indeed falsified at Fidelity Financial Services. The falsified documents should already be in the file at your office.

The first act of falsification concerned the changing of the odometer mileage to make it look like the car was new. While Mr. Fleenor stated in his March 26, 1993 letter that the warranty was done by the warranty company, this particular document was actually done by an employee at Fidelity Financial Services. It seems absurd that while the warranty company is located in Texas, Mr. Fleenor wants everyone to believe that the document in question was initiated in that State.

Additional falsification concerns the naming of Auto Analyst as the selling dealer. Auto Analyst is in fact a marketing company which is part of the finance company. If Auto Analyst is the selling dealer, then why was I not asked to take my car there for the numerous needed electrical repairs?

Mr. Pleenor seems to want you to believe that I benefited from the "warranty". In the first place I did not even want a warranty. I was made to feel that if I didn't take the warranty, then the car could not have been financed. If I had wanted a warranty, I would have wanted one issued by the Ford Motor Company. Secondly, none of the electrical problems were ever corrected, even though there was this great "warranty". Finally, had I been issued a used car warranty, the cost of that warranty would have decreased the amount of money that has to be repaid to the finance company. The cost of the non existent "new car warranty" was added to the amount of money that had to be financed. As I said in an earlier letter, I am still paying for a useless warranty.

In the copy of the letter forwarded to your office by Mr. Brian Bakst, which, incidentally, I don't believe was ever forwarded to my home, the writer refers to me as one of the "financially substandard clients". If I am so "substandard," then why has Pidelity Financial Services received all monthly payments in much more than a timely manner?

The letter head itself reveals that Auto Analyst is part of the finance company. Because of what appears to be so obvious, I cannot believe that any business can be allowed to continue such gross misrepresentation. Mr. Bakst states how proud he is



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Letter to Mr. Karsh (Cont'd) April 2, 1993

-2-

of Auto Analyst's record with the Better Business Bureau and the State Department of Consumer Affairs. In a conversation with personnel at the BBB just prior to the filing of my complaint, I do believe that I was told that Auto Analyst is not listed with that organization.

I would like for both Auto Analyst and Financial Services management level personnel to know that despite their arrogant and insulting literary tones, I will continue to pursue this issue because some serious and illegal acts have occurred.

Sincerely,

James H. Bostwick

3136 Desert .ve, Apt. 4 East Point, GA 30344

November 15, 1992

First Extended Service Corporation 13601 Preston Road, Suite 501, East Dallas, Texas 75240

Re: NE4-GM1-301234

Sir:

Over the past several months I have come to realize that the Extended Service Warranty on my car is worthless. I have reached this conclusion not only because each time there is a problem I am sent to a gas station for repairs as opposed to a dealer, but also because I am frequently told that things that are covered under the terms of the warranty are not. Consequently I have had to pay for all repairs.

When my car breaks down it is supposed to be repaired by the selling dealer, which is Neal Pope Ford. Yet I am forced to call Auto Analyst which, in fact, is not a dealer but an extension of Fidelity Financial Services.

Since purchasing the vehicle I have been plagued with numerous electrical problems. I have had to replace four Halogen head-lamp bulbs on the right, and this has been an expense within itself. I might add here that the most recent burnout of the headlamp bulb in that area endangered my life, as wires were burned underneath the hood. A similar incident occurred with the third brake light that is located in the rear window. The wires were burning and they had to be disconnected in order to stop the fire. In addition to these problems, I have had to watch the coolant light and the brake light come on all too often; I have been bothered with a horn that blows only when it wants to; and I have had to watch the light from the radio go on and off. It seems to me that will all of these electrical problems, it should be quite lucid that something is wrong with the wiring.

Besides the problems that I've already mentioned, less than six months after I bought the car, a major defect was found with the Air Conditioning System. The repair cost was over \$300, and the only way that I avoided paying the money was because the dealer did not phone me prior to making the repairs:

-2-

To First Extended Service Corporation (Cont'd) November 15, 1992

The electrical problems still exist, and I plan to nave the wiring repaired. However, I do not intend to take my car to one of the gas stations that Auto Analyst has referred me to in the past. The car needs to go to a Ford Dealer, and that's where it's going.

Because I have had to pay out so much money for repairs, and because I must pay out more, I am requesting that the Extended Service Warranty be cancelled, and that the money due me be refunded, as it is not my nature to pay for something that I am obviously not getting.

Sincerely,

James H. Bostwick

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3136 Desert Drive, Apt. 4 East Point, GA 30344

November 26, 1992

Auto Analyst 3845 North Druid Hills Road, #101 Decatur, GA 30033

Sir or Macam:

Enclosed is a copy of a letter that I mailed to First Extended Service Corporation requesting cancellation of the Extended Service Agreement. Their response is also enclosed.

The reasons for this request are outlined in that letter; therefore, I do not feel the need to write you another. Regardless of the steps necessary for me to take in order to cancel the agreement, I am willing to take each one, as I have numerous concerns regarding the legitimacy of the entire agreement.

Şincerely,,

James H. Bostwick

Case 1:05-cv-00426-MHS Document 1-5 Filed 02/15/05 Page 9 of 49

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ADDRESS: 3845 M. Dind 1/1/15 Pd. Steicy
CITY. Decate GA TELEPHONE NO. 404. 321.3373
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EXHIBIT



Document Attached

Documents which supports the Plaintiffs' legal Claims

SCOTT BLVD. MC ORS INC. 1670 Scott Blvd • Decatur, Georgia 30033 (404) 633-9656

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PLAINTIFF'S
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	THE SUPERIOR COURT OF FULLY WATER
1	STATE OF GEOFGIA
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3	TONE L. TARE * Total Journal of Cel. Simular
7	CIVIL ACITON
5	THE NAMES FORES 1.
6	. Has six also
	ALTVA LETDER SERVICE, CD. * FILED IN OFFICE
8	kamonant. Nov - 1994
9	DEPUTY CLERK SUPERIOR COURT
10	DEPUTY CLERK SUPERIOR COURT ALT CRIER
11	To any State Police Officer, Sheriff, Sheriff Pepus, Constable, Earshal,
12	Dept of Murshil, County or City Police Officers. CREETING
7 7 \ 	You are hereby commanded to assist the Peritioner, Tony L. Ware in the
* * * -	subve-capanated civil action by allowing said petritioner or his agent to take into
15	possession of his said vehicle Tag Number beening AMT776 Blue Plymouth Acclaim 4
16	Door I. D 193RA46KSKF466829 which may be located at Scott Bolevard Notois, 1060 or
17	1640 Goott Bolevard, Decamin, Georgia 30033 or wherever said vehicle can be found
18	and any victation of this order by any officer or person chall be in contempt of
19	this Court pursuant to Georgia Law Title 15 O.C.G.A. Code 915-1-4(a).
20	IT IS FURTHER ORDERED, That you are also commanded to file a notice with
21	this Court that such order by this Court has been carry out and that Petitioner,
22	Tony L. Vara be allowed to make certified copies of this order without cost.
23	IT IS SO OFDERED, This Tre Day Of
24	1994
25	JUDGE OF SUPERIOR CAUCE
26	SUPERIOR COURT OF FULTON COUNTY
?7	Prepared and Presented By:
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1		STATE OF G		
3		* *		
4	TONY L, WARE Petitionor,	` *		
5 6		* * *	CIVIL ACTION	
7	VS.	* * *	E 2 9 1 5 9 FILE MIMBER:	•
8	AMERICAN LENDER SERVICE, CO	* * *	FILED IN OFFICE	٠,
9	Respondent.	*	ALIG 2 5 1994	: : :
11		*	DEPUTY CLERK SUPERIOR COURT FULTON COUNTY GA	1

JUDGMENT and ORDER

This action having become in default on July 9th, 1994 by failure of the respondent to file its answer or other defensive pleading, and fifteen (15) days having elapesd from the date of the default and the default not having been opened as a matter of right or by order of the Court, and the issue of damages having tried before the Court without a jury and a decision having been rendered by this Court for the petitionor and againts respondent and its principal by granting petitionor petition as prayed for by ordering the immediate release of petitionor vehicle tag being AMN776 Blue Plymouth Acclaim 4 Door I.D. Number 1P3BA46K8KF488829 pursuant to Georgia Law Title 9 Code 89-11-55(a).

IT IS FURTHER ORDERED, That a new Certificate of Title be issued to said Tony L. Ware, Petitionor without any liens on said vehicle and that old title is declared mill, void and having no effect.

IT IS SO ORDERED AND ADJUDGED. That petitionor vehicle be release immediately into the hands of Tony L. Ware. Petitionor or his agents, and that a certificate of title also be issued immediately.



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7	This The EX Day Of Aug 199/
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5	Porte Blenson
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7	SUPERIOR COURT OF FULTON COUNTY
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9	Proposed and programmed have
10	Prepared and presented by:
11	17 1. Wan
12	Tony L. Ware, Petitionor & Claimant
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14	
15	1479 Moury Avenue, S.W. Suite 227
16	Atlanta, Georgia 30315-3546
17	(404)622-1594
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IN THE SUPERIOR COURT OF FULTON COUNTY 1 2 STATE OF GEORGIA 3 4 TONY L. WARE, CEO AND T. L. WARE BOTTLING CO., INC., 5 6 Plaintiffs, CIVIL ACTION FILE NUMBER: 7 VS. 8 FLEETBOSTON FINANCIAL CORP. F/K/A BANKBOSTON CORP.) VERIFICATION TO COMPLAINT 9 10 Defendant.) DEMAND FOR TRIAL BY JURY 11 STATE OF GEORGIA) 12) 55. **COUNTY OF FULTON)** 13

VERIFICATION

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PERSONALLY APPEARED before me, the undersigned attesting officer duly authorized by law to administer oaths is, DR. TONY L. WARE, Chairman & CEO of T.L. WARE BOTTLING COMPANY, INC., in the above-styled action after being duly sworn in deposes and states under oath the following

- 1 That I am Plaintiff TONY L. WARE, Chairman & CEO of T.L. WARE BOTTLING COMPANY, INC., also known as the Plaintiff in this action and that I hereby further state that I am over the age of the legal majority in the United States and is competent to give this affidavit on behalf of myself and my Corporation
- 2 That I further certify that all allegations made in the Complaint for Damages and the Exhibits attached thereto are deemed true and correct to the best of my personal knowledge, information and belief

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1	IN WITNESS AND TESTIMONY HEREOF, This affidavit is made under
2	oath and is true and correct to the best of my personal knowledge, information and
3	belief Further Affiant say not
4	This the o day of December, 2004.
5	Respectfully Submitted,
6	11/ W/ac
ار	Dr. Tony L. Ware, Affiant
8	
9	Sworn to and Subscribed before Me, This theday of, 2004.
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11	Mulael & A
12	STATE NOTARY PUBLIC OFFICE
13	MICHAEL PLICHTSON 50 Notary Page 11 - 10 to 10 to 10 My Caritanaeu 12 properties, 2998
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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

TONY L. WARE, CEO and)
T. L. WARE BOTTLING CO., INC.,)

DEC 2004
DEC 2004
DEPUTY CLERA SUPERIOR COURT
FULTON COUNTY, GA

Plaintiffs,

VS.

CIVIL ACTION FILE NUMBER:

FLEETBOSTON FINANCIAL CORP. F/K/A BANKBOSTON CORP.

REQUEST FOR ADMISSIONS

Defendant.

DEMAND FOR TRIAL BY JURY

PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

COMPANY, INC., the Plaintiffs in the above-styled civil matter proceeding pursuant to O C.G.A. § 9-11-36(a) and hereby personally serves the Defendant FLEETBOSTION FINANCIAL CORP. Defendant is required to answer, object or deny said admissions and file its responses with the Court not more then (45) days after service of the Summons and Complaint thereof as required by O.C.G.A. § 9-11-36(a) If Defendant's responses, answers or objections are not filed with the Court within 45 days after service upon the Defendant, then Defendant will have admitted and made the following admissions to wit

1 The Defendant FLEETBOSTION FINANCIAL CORP, admits that it have been properly serve with process of Summons and Complaint and further states that Cathy Cox and her agents is the Defendant's Agent for service of process and all other services and notices in the above-styled civil action

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- 2 The Defendant FLEETBOSTION FINANCIAL CORP, admits that it has committed all acts stated in the Plaintiffs' Complaint and that all exhibits attached thereto are also admitted as true
- 3 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that the Plaintiffs is entitled to the statutory damages of not less then the amount and sum stated in the Plaintiffs' Complaint and further waives all other defects in this civil action
- 4 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that the Plaintiffs are entitled to statutory property damages in the Complaint not less than the amount of \$75,507,000.00 [Seventy-five Million Five Hundred and Seven Thousand Dollars] and further waives all other defects and objections to the contrary in this civil action
- 5 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that the Plaintiffs are entitled to punitive damages of not less than the amount of \$95,000,000.00 [Ninety-five Million Dollars] and further waives all other defects and objections to the contrary in this civil action
- 6 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that Plaintiff is entitled to pre interest judgment from June 4^{th} , 1994 until the date final judgment is entered and further waives all other defects and objections to the contrary in this civil action
- 7 The Defendant FLEETBOSTION FINANCIAL CORP, admits that these admissions shall be govern by the holdings in <u>G.H. Bass & Co., v. Fulton County</u> <u>Board of Tax Assessors</u>, 268 Ga. 327, 486 (2000) SE2d 810 (1997) and <u>Solis v</u> <u>Lamb</u>, 244 Ga App 8, 534 SE2d 582 (2000)
- 8 The Defendant FLEETBOSTION FINANCIAL CORP, admits that the Plaintiffs' Complaint for damages states a legal claim to which relief can be granted by the Court and that a motion to dismiss such Complaint or to set aside any final judgment under O C G A § 9-11-60(d) based upon such grounds would be without merit by the Defendant. Therefore, the Complaint states a legal claim for relief and is deemed true and correct without any objections made by the Defendant.

9 The Defendant FLEETBOSTION FINANCIAL CORP, admits that there are no genuine issues as to any material facts as to liability and damages and that the Plaintiffs are entitled judgment to a Summary Judgment on the issue of liability and damages as a matter of law and waives any defects or objections to the contrary

10 The Defendant FLEETBOSTION FINANCIAL CORP admits to the Court or the jury that no other testimony, affidavits, evidence which is contrary to these admissions shall not supersede these admissions during any hearing or trial and either before and after entry of any verdict or final judgment

11 The Defendant FLEETBOSTION FINANCIAL CORP, admits that any amendments or withdrawal of these admissions by the Court or by the Defendant concerning the matters admitted would cause the Plaintiffs an undue burden and would be prejudice to them and the case will not be best served

WHEREFORE, The Plaintiffs prays and demand that the Defendant in this action answer, object or deny the forgoing admissions within **(45)** days from the date of service with the Summons and Complaint or said admissions will be taken as true by the Defendant by the operation of law

Respectfully Submitted,

Michael R. Johnson, Sr. Attorneys for the Plaintiff Georgia Bar No. 395056

Respectfully Submitted,

Dr. Tony L. Ware, Chairman & CEO Plaintiff, Pro Se

IN THE SUPERIOR COURT OF FULTON COUNTY

STA	TE	OF	GEC	RGI	A

FILED IN OFFICE

) AFFIDAIVT OF SERVICE OF PROCESS

TONY L. WARE, CEO and	
T. L. WARE BOTTLING CO., INC.,	

Piaintiffs,

vs.) CIVIL ACTION) FILE NUMBER: 2004CV94553

FLEETBOSTON FINANCIAL CORP. F/K/A BANKBOSTON CORP.

Defendant.

AFFIDAVIT OF SERVICE OF PROCESS

COMES NOW, TONY L. WARE, Plaintiff in the above-styled civil action and files this AFFIDAVIT OF SERVICE OF PROCESS on behalf of the Plaintiffs concerning the Defendant FLEETBOSTON FINANCIAL CORPORTION f/k/a BANKBOSTON CORPORATION pursuant O.C.G.A. § 14-2-1520(c) by stating the following under oath to wit.

1 That I am **TONY L. WARE, CEO**, Plaintiff of the Plaintiff **T.L. WARE BOTTLING COMPANY, INC.,** and that I do certify under oath that I have personally served the above-named Defendant on **December 10TH, 2004** with a copy of the Summons, Complaint and Plaintiffs' Request for Admissions by serving Defendant's last known CEO at the following address to wit.

M. A. FERRUCCI, President & CEO
FLEETBOSTION FINANCIAL CORPORATION
50 Kennedy Plaza, 16th, Floor
Providence, RI 02903

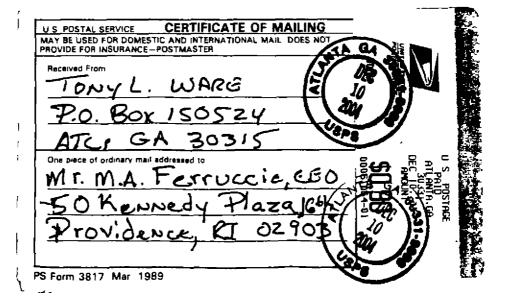
See, Exhibit "A" attached hereto

See, Exhibit "A" a

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1	IN WITNESS AND TESTIMONY HEREOF, This AFFIDAVIT OF
2	SERVICE is made under oath and is true and correct and is further made upon my
3	personal knowledge, information and belief. Further Affiant say Not.
4	On this 23 d, day of Doc , 2004.
5	
6	Respectfully Submitted,
7	/12. w-
8	Tony L. Ware, CEO & Plaintiff
9	Plaintiff's Address:
10	TONY L. WARE, Chairman & CEO
11	T.L. WARE BOTTLING COMPANY, INC.
12	P.O. BOX 150524-DEPT. 0227
	ATLANTA, GEORGIA 30315-0188 (404) 945-0342
13	
14	Sworn to and,Subscribed before Me,
15	This, 2004.
16	Machina K
17]	STATE NOTARY PUBLIC OFFICER
18	MICHAEL R JOHNSON SQ Notary Public Daka" - July Gorgia My Commission Expect April 23, 2005
19	My Commission Expire On.
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Exhibit "A"

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T. L. WARE BOTTLING COMPANY, INC.

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VIA - U.S. CERTIFIED MAIL

December 10th, 2004

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Mr M A Ferrucci, CEO FleetBoston Financial Corporation 50 Kennedy Plaza, 16th, Floor Providence, RI 02903

Reference: Summons and Complaint.

Dear Mr Ferrucci

This letter is also in reference to our legal claims we have against your company. Enclosed you will find copies of the Summons, Complaint and Request for Admission concerning a lawsuit we filed against your Company in the Superior Court of Fulton County in the State of Georgia which require an answers by FleetBoston Financial Corporation.

Thank you for your time concerning our claims

Respectfully yours,

T L Ware Bottling Company, Inc.

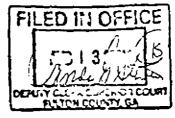
Dr Tony L Ware, PhD, JD

Chairman and CEO

TLW/iw

cc Michael R Johnson, Esq.

Enclosure



IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

Petitioner,)	CIVIL ACTION NO
)	
HARRY J MATHIS)	
)	
	ORDER	

The Petition for Appointment of HARRY J MATHIS,

for Permanent Process Server having been read and considered,

IT IS HEREBY ORDERED That HARRY J MATHIS.

Shall be, and hereby is, Appointed Permanent Process Server for

Matters pertaining to this Court

his and day of Chegustroo

CHIEF DUDGE, ELIZABETH E LONG

Fulton/County Superior Court Atlanta Judicial Circuit

BOOK 5004 PAGE 147

Exhibit "A"

IN THE SUPERIOR COURT OF FULTON COUNTY

FILED IN OFFICE
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GA
)
) CIVIL ACTION) FILE NUMBER: <u>2004CV94553</u>
) RETURN OF SERVICE OF PROCESS
)
)

RETURN OF SERVICE OF PROCESS

comes now, Harry J. Mathis, Court Appointed Process Server in the above-styled civil action and files this RETURN OF SERVICE OF PROCESS on the above-named Defendant FLEETBOSTON FINANCIAL CORPORTION f/k/a BANKBOSTON CORPORATION within the statute of limitation and pursuant to the law of this State under O C G A § 14-2-1520(c) by stating the following under oath to wit

1 That I am **HARRY J. MATHIS** and that I do certify under oath that I have personally served the above-named Defendant on **December 10TH**, **2004** with the Summons, Complaint and Plaintiffs' Request for Admissions by serving the Georgia Secretary of State at the following address to wit

FLEETBOSTON FINANCIAL CORPORTION f/k/a
BANKBOSTON CORPORATION
c/o Cathy Cox, Georgia Secretary of State
2 Martin Luther King Jr., Drive, N.E., Suite 315
ATLANTA, GEORGIA 30334

IN WITNESS AND TESTIMONY HEREOF, This RETRUN OF SERVICE is made under oath and is true and correct and is further made upon my personal knowledge, information and belief. Further Affiant say Not

On this 39th, day	y of <u>Decimper</u> , 2004.
	Respectfully Submitted, Harry Mathis
	Harry J. Mathis, Process Server
Process Server's Address:	
HARRY J. MATHIS	
5490 Hunters Forest Lane COLLEGE PARK, GEORIGA 30349	
Sworn to and Subscribed before	Me,
This 29th day of Kerem	<u>les</u> , 2004.
Sylvia K. Tarisis	
STATE NOTARY PUBLIC OFFICE Notary Public, Clayton County, Georgia My Commission Expires March 19, 2007	ER

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FILED IN OFFICE

TONY L. WARE, CEO and T. L. WARE BOTTLING CO., INC.,	JAN 2 5 2005 DEPUTY CLERK SUPERIOR COURT FULTON COUNTY GA
Plaintiffs,	$\overline{}$
vs.) CIVIL ACTION
) FILE NUMBER: <u>2004CV94553</u>
FLEETBOSTON FINANCIAL CORP.)
F/K/A BANKBOSTON CORP.) AFFIDAVIT OF PRE INTEREST
)
Defendant.)

STATE OF GEORGIA COUNTY OF FULTON)

AFFIDAVIT OF PRE JUDGMENT INTEREST

PERSONALLY APPEARED before me, the undersigned attesting officer duly authorized by law to administer oaths is, DR. TONY L. WARE, CEO Plaintiff of T.L. WARE BOTTLING COMPANY, INC., in the above-styled action after being duly sworn in deposes and states under oath the following

-1-

That I am DR. TONY L. WARE, CEO and that I am over the age of the legal majority and is competent to give this affidavit. I further state that all statements made in this affidavit are made on my personal knowledge, information and belief

-2-

I am qualified as an expert witness to give this affidavit concerning the amount of Pre Judgment Interest and that I also have a PhD and a MBA in business Adminstration and that I will give testimony as it relates to the pre judgment interest that have accrued on \$226,521,000 00 from June 4th, 1994 until January 4th, 2005

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That pursuant to O C G A § 51-12-14(c) pre judgment interest is given to a Plaintiff at the prime interest rate published by the STATISICAL RELEASE H 15 Board of Governors of the Federal Reserve Systems a/k/a the Federal Reserve Bank at the time a Plaintiff makes a unliquidated demand concerning any legal claims

-4-

As of June 4th, 1994 the Prime Interest Rate published by the STATISICAL RELEASE H 15 Board of Governors of the Federal Reserve Systems a/k/a the Federal Reserve Bank at the time the Plaintiffs made their demand was at the legal rate of 7 25% See, Exhibit "A" attached hereto Pursuant to O C G A § 51-12-14(c) 3% is also add to the prime interest rate, which makes the total pre judgment interest for the Plaintiffs in this action is10 25%

I have calculated the interest on \$226,521,000.00 at the rate of 10 25% for 10 6 years that is to say (from June 4th, 1994 to January 4th, 2005) which leads to a total amount of Pre Judgment Interest of \$410,746.265.24.

IN WITNESS AND TESTIMONY HEREOF, This affidavit is made under oath and is true and correct and is further made on my personal knowledge. information and belief. Further Affiant sayeth not

day of Jaw

Respectfully Submitted,

Dr. Tony L. Ware, CEO, Affiant

Sworn to and Subscribed before Me,

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, 2005. _day of_<u></u>

Commissaon Kolis June 17,000

STATISICAL RELEASE H. 15

Pursuant to O.C.G.A. § 51-12-14(c)

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According to the

Board of Governors of the Federal Reserve Systems f/k/a the Federal Reserve Bank

© Copyright 2004 by T.L. Ware Bottling Company, Inc.

EXHIBIT "A"

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

ERED IN

TONY L. WARE, CEO and T. L. WARE BOTTLING CO., INC.,	DEPUTY CLERK SUPER
Plaintiffs, vs.) CIVIL ACTION) FILE NUMBER: 2004CV94553
FLEETBOSTON FINANCIAL CORP. F/K/A BANKBOSTON CORP.) CERTIFICATE OF DEFAULT)
Defendant.)

CERTIFICATE OF DEFAULT

COMES NOW, TONY L. WARE, Plaintiff of T.L. WARE BOTTLING COMPANY, INC., Plaintiff also on its behalf pursuant to the Uniform Superior Court Rules, Rule 15 and certify under oath the following matters

- 1 That upon review of the record in the above-styled civil matter there has been no defensive pleadings or answer filed in response to the Plaintiff's Complaint for Damages after proper service of process on the Defendant
- 2 That the Defendant was properly served on December 10th, 2004 by Harry J Mathis a Court Appointed Process Server
- 3 That the Defendant is in default and (15) days having passed since the day of Defendant's default
- 4 That the parties Plaintiffs has or will agree to the entry of a consent Final Judgment and Decree in the above-styled civil action

IN WITNESS AND TESTIMONY HEREOF, This affidavit is made under oath and is true and correct and is further made on my personal knowledge, information and belief. Further Affiant sayeth not

1	This 24th day of Jan, 2005.
2	Respectfully Submitted,
3	112.11-
4	Dr. Tony L. Ware, CEO, Affiant
5	
6	Sworn to and Subscribed before Me, This 26th day of mon, 2005.
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IN THE SUPERIOR COURT OF FULTON COUNTY ED IN OFFICE STATE OF GEORGIA 4 TONY L. WARE, CEO and T. L. WARE BOTTLING CO., INC., 5 6 Plaintiffs. CIVIL ACTION 7 **FILE NUMBER: 2004CV94553** 8 FLEETBOSTON FINANCIAL CORP. F/K/A BANKBOSTON CORP. MOTION FOR DEFAULT JUDGMENT 9 10 Defendant. ADMISSIONS FILED IN SUPPORT

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MOTION FOR DEFAULT JUDGMENT AND SUMMARY JUDGMENT

COMES NOW, TONY L. WARE, CEO and T.L. WARE BOTTLING **COMPANY, INC.,** the Plaintiffs and files their Joint Motion for Default Judgment pursuant to O.C G.A § 9-11-55(a) and for Summary Judgment on the issue of damages pursuant to O.C.G.A. § 9-11-56(a) against the above-named Defendant FLEETBOSTON FINANCIAL CORPORATION. Based upon the record in this action, the Defendant's admissions and applicable State, the Plaintiffs is entitled to judgment as a matter of law. The Plaintiffs shows the Court the following

I. STATEMENT OF FACTS

The Plaintiffs Tony L Ware, CEO and T L Ware Bottling Company, Inc., brought this civil action on December 7th, 2004 based upon their ten count Complaint for Damages, Injunction, RICO violations, Fraud, Gross Negligence and other violations of both Federal and State laws and further requesting injunctive and other equitable relief concerning all other claims and disputes against the Defendant FleetBoston Financial Corporation f/k/a/ BankBoston Corporation

Defendant FleetBostion is a foreign corporation having withdrawn from doing business in this State pursuant to O C G A § 14-2-1520(b). After proper service of process of the Summons, Complaint and Request for Admissions on the Defendant on December 10th 2004 by Harry J Mathis a Court Appointed Process Server, See Docket No E4 the Defendant FleetBoston Financial failed to file its answer to the Summons and Complaint and became in default on January 11th, 2005

There has been fifteen (15) days having elapsed from the date of this default and the default not having been opened as a matter of right or by an order of this Court and hence the Plaintiffs are clearly entitled to a judgment by default against the Defendant as a matter of law. The Plaintiffs avers that there are no just reasons for delay of the entry of this final judgment and therefore enters final judgment for the Plaintiffs' as to all claims pursuant to O C G A § 9-11-54(b)

II. DISCUSSION

There is no dispute that Defendant FleetBostion is a foreign corporation withdrawn from doing business in this State pursuant to O C G A § 14-2-1520(b) See, (Plaintiffs' Complaint Exhibit "A") and that proper service of process was made on the Defendant by a Court Appointed Process Server by serving the Georgia Secretary of State pursuant to O C G A § 14-2-1520(c). See, Return of Service at Docket No E4. Defendant failed to file its answer to the Summons and Complaint and became in default on January 11th, 2005. The Plaintiffs having filed their joint Motion for Default and Summary Judgment on the issue of Damages, such motion can be heard by the Court. Therefore, since Defendant is in default liability is establish by the operation of law. See, O C G A § 9-11-55(a)

III. ARGUMENT AND CITATION OF AUTHORITY

The only issue that remain in this civil action are the issue of damages. With the consent of the Plaintiffs, the Court should entertain our joint Motion for Default Judgment and Summary Judgment on the issue of damages. Defendant has legally waived all further notices in this action pursuant to O.C.G.A. § 9-11-5(a). Defendant is not entitled to any notice of the final hearing on the Plaintiffs' joint motion.

There has been a long line of cases rendered by our Georgia Supreme Court that holds that the failure of a Defendant to file pleadings in an action is deemed a waiver by that Defendant of all further notices to the Defendant in the action. This includes all notices of time and place of trial and the issuing of any final decree in the action. See, *Harris v. Harris*. 258 **Ga** 496, 371 **SE2d** 399 (1988), *Hardwick v. Hardwick*. 245 **Ga** 570, 266 **SE2d** 184 (1980), *Brooks v. Brooks*, 242 **Ga** 444, 249 **SE2d** 244 (1978), *Gibson v. Gibson*, 234 **Ga**. 528, 216 **SE2d** 825 (1975)

Thus, this waiver of further notices of a hearing and the time and place of trial provided by O C.G.A § 9-11-5(a) would control over any conflicting Court Rules See, *Hulsey Pool Co. v. Troutman*, 167 Ga. App. 192, 306 SE2d 83 (1983)

Therefore, the Defendant in this action has waived all notices of the entry of this final judgment as a matter of law

(a) DEFENDANT FLEETBOSTION'S ADMISSIONS

When the Plaintiffs served the Defendant with their Complaint for Damages they also served the Defendant with a copy of "Plaintiffs' Request for Admissions." See, Docket No E4 Defendant also failed to answer the Plaintiffs' request for admissions in this action. See, Docket No E3. Under O.C.G.A. § 9-11-36(a) all matters which are not denied or objected to by a Defendant shall be deemed admitted if not denied by a Defendant within the time permitted for answering a request for admissions. Because Defendant FleetBostion did not answer, object or deny the Plaintiffs' request for admissions, the Defendant FleetBostion therefore made the following judicial admissions to wit

- "2 The Defendant FLEETBOSTION FINANCIAL CORP, admits that it has committed all acts stated in the Plaintiffs' Complaint and that all exhibits attached thereto are also admitted as true"
- "4 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that the Plaintiffs are entitled to statutory property damages in the Complaint not less than the amount of \$75,507,000.00 [Seventy-five Million Five Hundred and Seven Thousand Dollars] and further waives all other defects and objections to the contrary in this civil action."

- "5 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that the Plaintiffs are entitled to punitive damages of not less than the amount of \$95,000,000.00 [Ninety-five Million Dollars] and further waives all other defects and objections to the contrary in this civil action."
- "6 The Defendant FLEETBOSTION FINANCIAL CORP, admits to the Court or the Jury that Plaintiff is entitled to pre interest judgment from June 4th, 1994 until the date final judgment is entered and further waives all other defects and objections to the contrary in this civil action."
- "8 The Defendant FLEETBOSTION FINANCIAL CORP, admits that the Plaintiffs' Complaint for damages states a legal claim to which relief can be granted by the Court and that a motion to dismiss Plaintiffs' Complaint or to set aside any final judgment under O C G A § 9-11-60(d) based upon such grounds would be without merit by the Defendant Therefore, the Complaint states a legal claim for relief and is deemed true and correct without any objections made by the Defendant"
- "9 The Defendant FLEETBOSTION FINANCIAL CORP, admits that there are no genuine issues as to any material facts as to liability and damages and that the Plaintiffs are entitled judgment to a Summary Judgment on the issue of liability and damages as a matter of law and waives any defects or objections to the contrary"
- "11 The Defendant FLEETBOSTION FINANCIAL CORP, admits that any amendments or withdrawal of these admissions by the Court or by the Defendant concerning the matters admitted would cause the Plaintiffs an undue burden and would be prejudice to them and the case will not be best served."

These un-withdrawn admissions made by the Defendant FleetBoston Financial Corporation are deemed judicial admissions and cannot be overlooked or set aside by this Court See, O C G A § 9-11-36(b)

The statute reads in part that

"(b) Effect of admission. Any matter admitted under this Code Section is conclusively established unless the court, on motion, permits withdrawal or amendment of the admission."

(b) TRIAL COURT'S DISCRETION

This Court will only have discretion under O.C.G A § 9-11-36(b) when a party moves to determine the sufficiency of the answers or objections filed in response to a request for admissions. See, *Mountain View Enters, Inc. v. Diversified Systems*. 133 Ga. App. 249, 211 SE2d 186 (1974). Defendant should have moved to amend or withdraw its admissions in order for this Court to use its discretion. However, without such a timely motion made by the Defendant FleetBoston to withdraw or amend its admissions this Court as a matter of law is without discretion, authority or jurisdiction to set aside or amend Defendant's admissions on its own motion.

(c) GEORGIA'S SUPREME COURT RULE ON ADMISSION

This Court is also bound by the holding made by our Georgia Supreme Court in *G.H. Bass & Co. v. Fulton County Bd. Of Tax Assessors*, 268 **Ga.** 327, 486 **SE2d** 810 (1997) holding that a Defendant's un-withdrawn admissions are deemed admitted when not denied. The Georgia Supreme Court held in part that

"The [Defendant] did not move the trial court to allow the withdrawal or amendment of its admissions either before or after [the Plaintiffs] raised the legal effect of the [Defendant's] failure to respond to its requests and did not offer any justification for its failure to respond which would have authorized the trial court to exercise its discretion under O.C.G.A. § 9-11-36(b) to relieve the [Defendant] from the consequence of its admissions. Because the [Defendant] did not avail itself of any of the variety of the responses available under O.C.G.A. § 9-11-36 and chose not to seek the liberal remedies afforded to parties under the statute to avoid the consequences of a failure to respond, we hold that the subject matter of [Plaintiffs'] requests for admission stood admitted"

"The language in O.C.G A § 9-11-36(a) is clear, unambiguous, and unequivocal and means just what it says. One must comply strictly and literally with the

terms of the statute upon the peril of having his response construed to be an admission."

"While we recognize that the result on the [Defendant] may be criticized as harsh or draconian, our holding benefits both bench and bar in that it promotes constancy and stability in the law by clarifying that the plain language of a civil practice statute will be applied consistently to all parties; hence, all practitioners will be able to govern their behavior accordingly."

"Because the admissions were not withdrawn or amended, the Court of Appeals erred by holding that the [Defendant's] failure to respond was a matter of no consequence."

"Judgment reversed."

With emphases supplied and citations omitted Thus our Georgia Court of Appeals has echoed the Georgia Supreme Court holding in its opinions in <u>Mays v.</u> <u>Ed Voyles Chrysler-Plymouth, Inc.</u>, 255 Ga. App. 357, 565 SE2d 515 (2002), <u>Solis v. Lamb</u>, 244 Ga. App. 8, 534 SE2d 582 (2000) The Georgia Court of Appeals has ruled in <u>Mays v. Ed Voyles Chrysler-Plymouth, Inc.</u>, Supra, that

"A matter admitted in response to requests for admission under O.C.G.A. § 9-11-36 is conclusively established unless the court, on motion, permits withdrawal or amendment of the admission.... Such a solemn admission in judicio is conclusive as a matter of law on the matter stated and cannot be contradicted by other evidence unless it is withdrawn or amended on formal motion"

Because Defendant has already admitted that the Plaintiffs are entitled to not less than \$75.507 000 00 in property damages, \$95,000,000 00 in punitive damages and pre interest judgment from June 4th. 1994 until the date final judgment is entered in this civil action. There are no genuine issue as to any material fact concerning the amount of damages and that the Plaintiffs are entitled to Summary Judgment on the issue of damages as a matter of law. See, *Mays v. Ed Voyles Chrysler-Plymouth*, *Inc*, 255 Ga. App. 357, 565 SE2d 515 (2002). A final judgment should be granted to the Plaintiffs based upon Defendant's judicial admissions along.

Page 6

IV. CONCLUSIONS

For the reasons stated herein the Plaintiffs conclude that they made proper service of process on Defendant FleetBoston Financial Corporation with the Summons, Complaint and Request for Admissions by serving the Georgia Secretary of State pursuant to **O.C.G.A. § 14-2-1520(c)** See, Docket No E4

They further conclude that the Defendant is in default as a matter of law and that Defendant FleetBostion has legally waived all further notices in this action pursuant to O C.G.A § 9-11-5(a) This also include notice of time and place of trial and the issuing of any final judgment and decree in this civil action

They further conclude that the admissions made by the Defendant FleetBoston Financial Corporation as to the amount of damages are deemed judicial admissions and cannot be overlooked by this Court and is therefore binding on this Court See, O.C.G.A. § 9-11-36(b). Because of Defendant's solemn admissions in judicio are binding, they are conclusive on the issue of damages and cannot be contradicted by other evidence unless it is withdrawn or amended on formal motion

Therefore, the Plaintiffs are entitled to relief sought and that this Court has jurisdiction to grant the Plaintiffs' request for relief concerning their joint Motion for Default Judgment and Summary Judgment on the issue of damages in this civil action. See, Georgia Constitution, Article VI Section IV Paragraph I, O.C G.A. § 9-11-55(a) and O.C G.A. § 9-11-56(a)

WHEREFORE, The Plaintiffs hereby prays and demands that this Court enter a final Default judgment and Summary judgment on the issue of damages because the Plaintiffs are entitled to such relief as a matter of law. The Plaintiffs request that the Court further grant the following relief to wit

1 That a final judgment be entered in favor of the Plaintiffs Tony L Ware, CEO and TL Ware Bottling Company, Inc., against the Defendant FleetBoston Financial Corporation in the amount of \$75,507,000 00 in property damages which damages are to be tripled pursuant to O C G A § 16-14-6(c) the (Georgia RICO Act) and 18 U S C § 1964(c) the (Federal RICO Act) resulting in a total amount of \$226,521,000.00 in favor of the Plaintiffs against Defendant FleetBoston Financial Corporation

- 2 That the Plaintiffs be awarded punitive damages against the Defendant for its illegal actions, frauds, willful misconduct, wanton, illegal thefts and RICO violations in the amount of \$95,000,000 00 in punitive damages which damages are to be tripled pursuant to O C G A § 16-14-6(c) the Georgia RICO Act and 18 U S C § 1964(c) the Federal RICO Act resulting in a total amount of \$285,000,000.00 in favor of the Plaintiffs against Defendant FleetBostion
- 3 That the Plaintiffs be awarded pre judgment interest against the Defendant FleetBoston Financial Corporation concerning the Plaintiffs' property damage claims from June 4th, 1994 upon entry of such final judgment in the amount of \$410,746,265.24 pursuant to O C G A § 51-12-14(c) See, Affidavit at Docket No E6 Thus, the Plaintiffs should have a total final judgment against Defendant FleetBoston Financial Corporation in the principle amount of \$511,521,000.00 and pre interest in the amount of \$410,746,265.24.
- 4 That the Defendant pay any and all post judgment interest that accrues on this final judgment after the entry of this final judgment pursuant to O C G.A § 7-4-12.
- 5 That the Clerk of this Court be order to issue a Writ of Execution (Fi Fa) in the principle amount of \$511,521,000.00 with interest in the amount of \$410,746,265.24 and the Court cost of this action. Upon the Clerk issuing the Writ of Execution (Fi Fa), Defendant FleetBoston Financial Corporation formerly known as BankBoston Corporation shall immediately pay and satisfy the final judgment of this Court as stated in such Writ of Execution (Fi Fa) and upon Defendant receiving a certified copy of this final judgment and the Writ of Execution
- 6 That unless the Defendant show good cause to this Court why it cannot pay or satisfy the final judgment of this Court with pre judgment interest, or if the Defendant fails or refuses to make payment of the final judgment including pre judgment interest to the Plaintiffs within 7 days upon receipt of a copy its order, then the Court adjudges the Defendant in civil contempt of this Court See, *Griggers v. Bryant*, 239 Ga. 244, 236 SE2d 599 (1977), *Wagner v Commercial*, *Inc.*, 203 Ga. 1, 45 SE2d 205 (1945)

7 That the Court orders that Defendant shall be subject to pay the Plaintiffs in addition to the final judgment and post judgment interest, a civil penalty of \$25,000 00 per day until the Defendant purges itself of such contempt by complying with the terms of this final judgment. See, *In re Harvy*, 219 **Ga. App** 76, 464 **SE2d** 34 (1995). This civil penalty will only apply if the Defendant fails to comply with the terms of this order within (7) days upon receiving notice of this order by the Court or by the Plaintiffs. The Defendant, its subsidiaries that are operating in this State, their officers and agents will be subject to further civil and criminal penalties and a writ of injunction that will enjoin them from operating in this State until Defendant has complied with the terms of this final judgment.

8 That the Sheriffs of this State and their lawful Deputies be ordered to take all actions needed to seize all monies, property and assets which is not exempt by law held by any persons, corporations, partnerships, banks or holding companies held on behalf of the Defendant or that is in the possession of the Defendant located within the jurisdiction of this State

9 That the Defendant be required to post supersede bonds in the amount of \$511,521,000.00 representing the principal and \$410,746,265.24 representing the pre judgment interest before the Defendant can file any pleadings, motions or appeals in this action. The Clerk of this Court is hereby directed not to file any motions, appeal or any other documents into this Court on behalf of the Defendant except an affidavit by the Defendant's CEO explaining why the Defendant cannot post the supersede bonds stated in this decree. Nor shall the Clerk of this Court set any hearings on any other matter before any other Judge of this Court until said Defendant has posted a total of \$922,267,265.24 in supersede bonds with the Clerk of this Court.

- 10 That the Defendant, its officers, agents, its servants, its assigns and its successors (such as Bank of America) or any other person, corporation, insurance company, bank or partnership acting under the authority of the Defendant FleetBoston Financial Corporation are hereby permanently enjoined and restrained from the following
- (a) That the Defendant be hereby permanently enjoined and restrained from assisting or aid and aiding its subsidiaries,

its officers, agents and servants in performing any illegal acts averred by the Plaintiffs and deemed by the Court to be illegal and a fraud against the Plaintiffs and other consumers in the State of Georgia,

- (b) That the Defendant be hereby permanently enjoined and restrained from operating in this State without a Certificate of Authority from the Georgia Secretary of State,
- (c) That' the Defendant, its officers, agents and its attorneys be permanently enjoined and restrained from filling any motions, pleadings or appeals for the purpose of delaying any rights adjudicated by this Court in favor of the Plaintiffs in this civil action. Nor shall the Defendant or its attorneys acting on behalf of the Defendant file any motions, pleadings or appeals for the purpose of harassing the Plaintiffs of any rights adjudicated by the Court and
- (d) That the Defendant its officers, agents and its attorneys be permanently enjoined and restrained from harassing the Plaintiffs in any discovery or post judgment discovery matters by asking questions in a matter which is deemed irrelevant to the case so adjudicated by this Court or that such questions has no legal value to the Plaintiffs' claims at issue. Nor shall Defendant's attorneys file any motions or pleadings in any other Court having jurisdiction on matters already admitted to by the Defendant and matters adjudicated by this Court in this civil action.

This $\frac{27 \cancel{4}}{}$, day of

, 2005.

Agreed and Consented to By:

Michael R. Johnson, Sr.

Attorney for the Plaintiff Georgia Bar No. 395056

Johnson & Associates, P. C.

340 West Peachtree Street, N.E.

Suite 200

Atlanta, Georgia 30308

23 (404) 688-7100

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Agreed and Consented to By:

Tony L. Ware, JD, Plaintiff

Chairman & CEO

1033 Kipling Street S.E.

Atlanta, Georgia 30315-7030

(404) 945-0342